

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

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IN RE: 1380 REALTY NY LLC,

CHAPTER 11

Debtor in Possession / Debtor

Case No: 24-40017(ess)

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**MOTION FOR A 2004 EXAMINATION UNDER OATH OF ARTHUR SPITZER AND
SUITABLE REPRESENTATIVE OF DES PARTNERS GROUP INC AND DES
PARTNERS GROUP LLC
AND
ORDER FOR PRODUCTION OF DOCUMENTS IN CONNECTION THEREWITH**

**TO: HONORABLE ELIZABETH S. STONG
UNITED STATES BANKRUPTCY JUDGE**

NOW HERE COMES, Debtor in Possession and Debtor 1380 Realty NY LLC as Movant, by and through its attorney of record, Linda M. Tirelli, Esq. of Tirelli Law Group, and does hereby move the Court pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedures for an Order:

- (a) Compelling **ARTHUR SPITZER, DES PARTNERS GROUP INC AND DES PARTNERS GROUP LLC**, to produce the documents as set forth in Exhibit "A" to this Motion at the date and time set forth below;
- (b) Compelling **DES PARTNERS GROUP INC AND DES PETNERS GROUP LLC** to appear, via a duly authorized representative most familiar with the documents identified in Exhibit "A," for an examination and to answer any and all questions regarding the documents and the topics identified in Exhibit "B" attached to the Motion, as the documents relate to the administration of the Bankruptcy estate;
- (c) Compelling **ARTHUR SPITZER** to appear, personally, with the documents identified in Exhibit "A," for an examination and to answer any and all questions regarding the documents and the topics identified in Exhibit "B" attached to the Motion, as the documents relate to the administration of the Bankruptcy estate;
- (d) Granting such other relief as this court deems just and proper.

Requested Date and Location for Production of Documents identified in Exhibit "A":

DATE: February 28, 2025

LOCATION: TIRELLI LAW GROUP
50 Main Street, Suite 1265
White Plains, New York 10606
Tel: (914) 732-3222

Requested Date and Location for Production of Documents identified in Exhibit "B":

DATE: February 28, 2025

LOCATION: TIRELLI LAW GROUP
50 Main Street, Suite 1265
White Plains, New York 10606
Tel: (914) 732-3222

Requested Date and Location for Examination for DES PARTNERS GROUP INC:

DATE: March 10, 2025

TIME: 10:00 a.m.

LOCATION: TIRELLI LAW GROUP
50 Main Street, Suite 1265
White Plains, New York 10606
Tel: (914) 732-3222

Requested Date and Location for Examination for Arthur Spitzer:

DATE: March 11, 2025

TIME: 10:00 a.m.

LOCATION: TIRELLI LAW GROUP
50 Main Street, Suite 1265
White Plains, New York 10606
Tel: (914) 732-3222

Requested Date and Location for Examination for DES PERTNERS GROUP LLC:

DATE: **March 12, 2025**

TIME: **10:00 a.m.**

LOCATION: **TIRELLI LAW GROUP**
50 Main Street, Suite 1265
White Plains, New York 10606
Tel: (914) 732-3222

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. On January 3, 2024, the Debtor and Debtor in Possession, 1380 Realty NY LLC (“138 Realty”) filed its voluntary petition so it may explore options of either reorganizing or liquidating under Chapter 11 of the Bankruptcy code.

2. 1380 Realty identified in Schedule A of its petition an asset, namely cash in the amount of \$600,000 held by DES Partners.

3. On May 3, 2024, a disputed creditor, 1971 60 Street LLC, filed a Motion to Dismiss the instant bankruptcy case.

4. In support of is motion, the Movant offers the affidavit of Harvey Abrahams together with a number of exhibits (see ECF Dkt No. 26)¹.

5. Included with the exhibits to Mr. Abrahams’ affidavit is a purported operating agreement as Exhibit 5. (see ECF Dkt. No. 26-8)².

6. The purported “operating agreement” names Yechezkel Kraut as the “sponsor” and 1971 60 Street LLC as the “Investor” in the opening paragraph on the first page of the purported “operating agreement”.

7. According to the purported “operating agreement” the Investor made a capital contribution of \$600,000.00 to the 1380 Realty NY LLC (see Pg. 1 Para 5 and Pg. 2 Para 7 of purported “operating agreement”)

¹ A copy of the Abrahams Affidavit is attached hereto as Exhibit A.

² A copy of the purported operating agreement is attached hereto as Exhibit B.

8. According to the purported operating agreement, the \$600,000.00 was distributed in accordance with a “Disbursal Authorization” which appears as Exhibit A to the purported “operating agreement”. The funds were allegedly disbursed as follows:

<u>AMOUNT</u>	<u>MADE PAYABLE TO</u>	<u>REASON FOR PAYMENT</u>
\$20,622.53	Riverside Abstract LLC	Title Bill
\$479,280.00	DES Partners	Sponsor designee
\$39,730.80	DES Partners	Sponsor Designee

9. The Debtor through its only true sole member, Yechezkel Kraut, lacks any knowledge of ever naming DES Partners as a “sponsor designee”. Moreover, there is no accounting for the transfer of either of the TWO (2) disbursements to DES Partners as referenced above.

10. To the extent DES Partners is holding cash assets which are financial contributions to the Debtor, the Debtor lacks knowledge as to the whereabouts of the funds and may require the turnover of the funds from DES Partners to the bankruptcy estate.

DES Partners and Arthur Spitzer

11. Attached hereto as **Exhibit 1**, is the Certificate of Formation of “DES Partners Group LLC” as filed with the New Jersey Department of Treasury, Division of Revenue and Enterprise Services.

12. The Certificate of Formation of “DES Partners Group LLC” filed in New Jersey indicates the name of Arthur Spitzer as the Authorized representative of the named LLC. The registered office address is in Toms River, NJ.

13. Attached hereto as **Exhibit 2**, is the formation information filed with the New York State Department of State Division of Corporations for the entity “DES Partners Group Inc.”.
14. The entity details filed with the NYS Department of State
15. Based upon information and belief, the party in control of both DES Partners Group LLC and DES Partners Group Inc is Arthur Spitzer.
16. Attached as **Exhibit 3** is a federal indictment dated October against Arthur Spitzer for illegal acts involving wire fraud and identity theft involving various mortgage and financial frauds harming many innocent property owners.
17. In the instant case, based upon information and belief, the bad actors include the claimants 1971 60th Street LLC, Harvey Abrahams, Ira Burstein, MSF Lending LLC who based upon information and belief conspired with Arthur Spitzer and his entities to defraud the Debtor out of money and its principal out of title to the property known as 1971 60th St., Brooklyn, NY, owned by the sole member of the Debtor.
18. On May 15, 2024, 1971 60 Street LLC, alone in its sole capacity, was the only one of the claimants to file a timely proof of claim, namely POC 1 seeking a debt of \$600,000 from the Debtor. Strategically, 1971 60 Street LLC attached no documents to support its proof of claim filed in October 2024 and despite passage of time has still not amended the claim to include any documentation.
19. On May 29, 2024, the Debtor filed a motion to expunge and disallow POC 1 filed by 1971 60 Street on the basis that there was no documentation to prove an actual debt filed to support the claim. Pursuant to FRBP 3001, the Debtor in its motion objecting to claim also seeks sanctions by way of legal fees and/or/ prohibition from filing any further claim or documents in the Debtor’s case.

20. On May 29, 2024, the Debtor exercised its right under F.R.B.P. 3004 and filed separate claims, disputed and under protest, in the amount of \$1.00 each for Harvey Abrams, Ira Burstein and MSF Funding. (see POC 2, POC 3 and POC 4)

21. 1380 Realty has already submitted to a 341 meeting of Movants and an Independent Debtor Interview. Attorney Rivera, counsel to all FOUR (4) claimants attended both meetings without filing an appearance for any of his clients.

22. 1380 Realty identified in Schedule A of its petition an alleged \$600,000 held by DES Partners.

23. In the instant motion, the Movants identify this same \$600,000 as a debt owed to them by way of “capital contribution”, which the Debtor denies ever receiving.

24. The Debtor avers it should be easy enough to prove a transfer of funds from lender/contributor to the Debtor, but to day the Movants have failed to provide any bank records whatsoever.

25. The Debtor avers that DES Partners Group Inc, DES Partners Group LLC and principal Arthur Spitzer would be able to readily provide proof of receiving the \$600,000.00 from the claimants and further provide documentation of a relationship or agency with the Debtor.

AUTHORITY FOR THE RELIEF REQUESTED

1. Bankruptcy Rule 2004(a) provides that: “[o]n the motion of any party in interest, the court may order the examination of any entity.” Bankruptcy Rule 2004(b) provides, in relevant part, that the scope of such examination extends to acts relating to liabilities of the Movant. Courts analyzing Bankruptcy Rule 2004 have recognized the right of a party in interest to conduct a 2004 examination, and the permitted scope of that examination is extremely broad.³

³ See, e.g., In re Texaco, Inc., 79 B.R. 551, 553 (Bankr. S.D.N.Y. 1987), citing In re Johns-Manville Corp., 42 B.R. 362 (S.D.N.Y.1984); see also, In re Brown, Case No. 18-10617-JLG (Bankr. S.D.N.Y. Oct. 11, 2018).

2. A party seeking a Rule 2004 examination has the burden of demonstrating good cause for conducting the requested discovery.⁴
3. Good cause is typically shown by establishing that the proposed examination " 'is necessary to establish the claim of the party seeking the examination, or * * * denial of such request would cause the examiner undue hardship or injustice.' " ⁵
4. "Good cause is established if the one seeking the Rule 2004 examination has shown that such an examination is reasonably necessary for the protection of its legitimate interest." ⁶
5. Here, Movant has serious questions and concerns regarding the exchange of \$600,000 to DES Partners on its behalf as stated in papers filed by the claimants.
6. Movant avers that 1971 60 Street and its principals have each violated/are violating provisions of the bankruptcy code in an attempt to collect a debt that is not owed to it/them.
7. Consequently, cause exists for this Court to compel document production under Bankruptcy Rules 2004(c) and 9016, and for issuance of an order directing Arthur Spitzer and DES Partners Group LLC and DES Partners Group Inc to each appear for an examination under Bankruptcy Rule 2004.

WHEREFORE, Movant respectfully requests the entry of an order substantially similar to the proposed order attached as "**Exhibit C**":

- (a) Compelling Arthur Spitzer and DES Partners Group LLC and DES Partners Group Inc, to produce the documents as set forth in Exhibit "A" to this Motion at the date and time set forth below;
- (b) Compelling Arthur Spitzer and DES Partners Group LLC and DES Partners Group Inc, to appear, personally in the case of Arthur Spitzer, and via a duly authorized representative (in the case of DES Partners Group LLC and DES Partners Group Inc) most familiar with the documents identified in Exhibit "A," for an examination and to answer any and all questions regarding the documents and the topics identified in Exhibit "B" attached to the Motion, as the documents relate to the administration of the Bankruptcy estate;

⁴ See In re AOG Entm't, Inc., 558 B.R. 98, 108 (Bankr. S.D.N.Y. 2016).

⁵ Id., citing In re Metiom, Inc., 318 B.R. 263, 268 (S.D.N.Y. 2004), quoting In re Dinubilo, 177 B.R. 932, 943 (E.D.Cal. 1993); accord In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991).

⁶ In re Hammond, 140 B.R. 197, 201 (S.D.Ohio 1992).

(c) Granting such other relief as this court deems just and proper.

Dated this 15th day of January 2025.

/s/ Linda M. Tirelli
Linda M. Tirelli, Esq.
TIRELLI LAW GROUP, LLC
Westchester Financial Center
50 Main Street, Suite 1265
White Plains, New York 10606
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LTirelli@TirelliLawGroup.com

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**EXHIBIT "A" DOCUMENT REQUEST
DIRECTED TO DES PARTNERS GROUP INC, DES PARTNERS GROUP LLC AND
ARTHUR SPITZER**

1. Any and all documents, computer records, reports, or other information in the possession, custody, or control of DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer pertaining to either DES Partners Group Inc, DES Partners Group LLC acting as a designee for the Debtor.
2. All transfer and delivery receipts for payments received as a “sponsor designee” at any time from the date of loan inception to present.
3. All agreements as exist between the Debtor and DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer.
4. All correspondences between the Debtor and DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer, from the beginning of time through the date of this motion.
5. All correspondences, in any form or medium, between DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer and Harvey Abrahams from the beginning of time through the date of this motion.
6. All correspondences, in any form or medium, between DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer and Ira Burstein from the beginning of time through the date of this motion.
7. All correspondences, in any form or medium, between DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer and 1971 60 Street LLC from the beginning of time through the date of this motion.
8. All correspondences, in any form or medium, between DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer and Victor Rivera, Esq. from the beginning of time through the date of this motion.
9. All documents, computer records, reports, or other information in the possession, custody

or control of DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer regarding transfers/assignments or sales of mortgage notes, mortgages, or any other documentation pertaining to the property known as 1971 60th St., Brooklyn, NY .

10. Complete accounting and all documentation of the funds received by DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer pertaining to the alleged mortgage loan account owed by the Debtor or its principal including all cancelled checks, receipts invoices, ledger entries, statements and the like.

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**EXHIBIT "B" OF TOPICS FOR 2004 EXAMINATION OF
DES PARTNERS GROUP INC, DES PARTNERS GROUP LLC AND/ OR ARTHUR
SPITZER**

Information regarding all documents requested in Exhibit "A" appended to the Motion.

1. All matters pertaining to Proof of Claim 1-1 filed in the debtor's case.
2. All matters alleged in the Motion to Dismiss and Relief From Stay filed by 1971 60 Street LLC.
3. All matters pertaining to funds transferred to DES Partners Group Inc, DES Partners Group LLC and/ or Arthur Spitzer as alleged by 1971 60 Street LLC.
4. All matters pertaining to any and all documents produced pursuant to this motion and order.